

## REMARKS

This Amendment is intended as a full and complete response to the non-final Office Action dated April 19, 2007. In the Office Action, the Examiner states that claims 1-18 are pending and stand rejected. By this Amendment Claims 1-18 continue unamended and new claim 19 is added.

In view of both the amendments presented above and the following discussion, it is respectfully submitted that the claims now pending in the application are not obvious under the provision of 35 U.S.C. § 103. Thus, it is earnestly believed that all of the claims are allowable.

## Rejections

### A. 35 U.S.C. § 103

#### 1. Claims 1-18

Claims 1-16 and 18 stand rejected under 35 U.S.C. §103 as being obvious over US Patent No. 6,247,626 to MacVicar in view of US Publication No. 2004/0215407 to Thielman et al. (hereinafter “Thielman”). The rejection is respectfully traversed.

Independent Claim 1 (and similarly, independent Claims 10, 12 and 17) recites:

“A propellant holder for being releasably mounted in a setting tool having a data communication interface (31), said propellant holder comprising a housing (21) having an interior space (22) for receiving propellant (23); and a data storage identification unit (40) affixed to said housing (21) and in which a propellant supply level (27) is stored for being read-out by the data communication interface (31) of the setting tool.” (Emphasis added).

As a preliminary matter, we believe that it would be helpful to review the appropriate standard under 35 U.S.C. § 103 for analyzing the features of a claim with respect to the prior art. It is well settled that [t]he test under 35 U.S.C. § 103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would

have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). The combination of the cited art fails to teach or suggest the Applicant's invention as a whole.

MacVicar fails to disclose "a data storage identification unit (40) affixed to said housing (21) and in which a propellant supply level (27) is stored for being read-out by the data communication interface (31) of the setting tool." It is submitted that Thielmann cannot be properly combined with MacVicar. Thielman discloses a fuel container with an internal pressure sensing unit (250) consisting of a pressure sensor (210), a memory unit (240), wire bonds (245) and a flexible circuit (260).

The resultant combination of MacVicar and Thielman teaches away from the present invention and fails to solve the problem addressed by the present invention. In particular, the combination of the cited art discloses the fuel container (100) of Thielman having an internal pressure sensor (250) incorporated into the setting tool of MacVicar. That is, the container (100) of Thielman replaces the canister 34 of MacVicar. The container (100) of Thielman includes the fuel pressure sensor (250) which replaces the "fuel pressure sensor" cited in FIG. 23 of MacVicar. The function of the control system of MacVicar, as described and shown in col. 16, line 4 to col. 18, line 9 and FIGS. 23 and 24 remains the same.

In this instance, combining the fuel container of Thielman with the setting tool of MacVicar teaches away from the present invention because there would not be any propellant supply level data (27) stored in or read out by the pressure sensor of Thielman. Specifically, the fuel level data in the setting tool of MacVicar is calculated based only on the fuel pressure in the container. Therefore, the additional storing of data in a data communication interface (31) would be senseless for a setting tool of MacVicar having a container (and internal pressure sensor) of Thielman installed therein.

By contrast, the present invention solves the problem of providing an indicator of the quantity of propellant remaining in a propellant holder differently from the

combination of the cited patents. Specifically, the present invention solves the problem of providing a fuel supply indicator by provisioning the propellant holder with a data storage identification unit (40), which stores the supply level data (27) as well as identification data of the propellant. The data storage identification unit can be easily read out electronically by the setting tool and is easily available to the user (see specification, page 5, line 10 to page 6, line 9). That is, each time a propellant charge is used (i.e., spent), the data storage identification unit (40) stores the remaining propellant charges, which is subsequently read-out electronically by the data communication interface (31) of the setting tool.

The combination of MacVicar and Thielman teaches away from the present invention, and accordingly would not motivate a person skilled in the art towards the Applicants' claimed invention. Therefore, the combination of the cited patents fails to teach or suggest the invention as a whole.

As such, it is submitted that independent claims 1, 10, 12 and 17 are not obvious and fully satisfy 35 U.S.C. §103 and are patentable thereunder. Furthermore, claims 2-9, 11, 13-16, 18 and 19 depend, either directly or indirectly from independent claims 1, 10, 12 and 17 and recite additional features considered inventive. At least for the same reasons discussed above, it is submitted that these dependent claims are also not obvious and fully satisfy 35 U.S.C. §103 and are patentable thereunder. Therefore, withdrawal of the claim rejections is respectfully requested.

## CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance, and allowance of the application is respectfully requested.

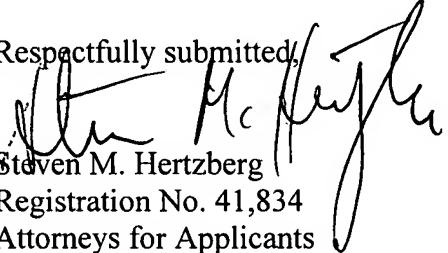
Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the

case in condition for final allowance, it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue.

Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned at (212) 885-9223 so that the appropriate arrangements can be made for resolving such issues as expeditiously as possible.

The Commissioner is hereby authorized to charge any fees, or to credit any overpayment, due by reason of this Amendment to Deposit Account No. 01-0035.

Respectfully submitted,

  
Steven M. Hertzberg  
Registration No. 41,834  
Attorneys for Applicants

ABELMAN, FRAYNE & SCHWAB  
666 Third Avenue  
New York, New York 10017-5621  
Tel: (212) 949-9022  
Fax: (212) 949-9190